

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ) Case No. 01-MDL-00875  
ASBESTOS PRODUCTS ) Philadelphia, PA  
LIABILITY LITIGATION ) January 17, 2013  
 ) 10:49 a.m.  
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TRANSCRIPT OF TELEPHONIC HEARING  
BEFORE THE HONORABLE DAVID R. STRAWBRIDGE  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs: ROBERT G. MCCOY, ESQUIRE  
ALLEN VAUGHAN, ESQUIRE  
KEVIN HANBURY, ESQUIRE  
MICHAEL P. CASCINO, ESQUIRE  
CASCINO VAUGHAN LAW OFFICES, LTD.  
220 South Ashland Avenue  
Chicago, Illinois 60607

For the Defendants,  
G.E.: JOHN A. FONSTAD, ESQUIRE  
SIDLEY AUSTIN, LLP  
1051 K Street, N.W.  
Washington, D.C. 20005

TIMOTHY E. KAPSHANDY, ESQUIRE  
EDWARD P. KENNEY, ESQUIRE  
SIDLEY AUSTIN, LLP  
One South Dearborn  
Chicago, Illinois 60603

For the Defendants,  
Westinghouse, Hirco: RICHARD M. LAUTH, ESQUIRE  
MICHAEL EVERET, ESQUIRE  
EVERET, WHEATHERSBY, HOUFF  
3405 Piedmont Road  
Suite 200  
Atlanta, Georgia 30305

Audio Operator: NELSON MALAVE  
Transcribed by: DIANA DOMAN TRANSCRIBING  
P.O. Box 129  
Gibbsboro, New Jersey 08026-0129  
Phone: (856) 435-7172  
Fax: (856) 435-7124  
Email: [dianadoman@comcast.net](mailto:dianadoman@comcast.net)

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1                   I\_N\_D\_E\_X2                   TOPICS3                   Morning

4                   09-61495 - Morris Settlement

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1 (The following was heard telephonically at 10:49 a.m.)

2 THE COURT: All right. Counsel, good morning. It's  
3 Judge Strawbridge.

4 COUNSEL: Good morning, Your Honor.

5 THE COURT: May I take roll? We have Bob McCoy,  
6 Allen Vaughan, Mike Cascino on for plaintiff, is that right?

7 MR. MCCOY: Yes.

8 THE COURT: And Richard Lauth and Mike Evert for the  
9 defendant?

10 MR. LAUTH: Yes, Your Honor.

11 THE COURT: Okay. Thank you. I wanted to have --  
12 to have this hearing because it is -- there are, in my  
13 judgment, a number of holes and gaps in the presentation of  
14 the information with respect to this settlement, or not  
15 settlement, and I wanted to see whether or not I could fill  
16 the gaps.

17 So I'm going to ask counsel that need to be  
18 considered that they are responding to my questions pursuant  
19 to their obligations as counsel, to obviously answer  
20 truthfully, to the best of their recollection, as to the way  
21 in which these circumstances came about, and what happened,  
22 principally from 2002 onward.

23 It appears to me, and I'm going to ask Mr. Cascino,  
24 or Mr. Vaughan, or Mr. McCoy from the plaintiff's side, it  
25 appears to me from the documentation that was submitted by the

1 defendants going back to 2002, the email communications from  
2 Mr. Vaughan to Mr. Evert in September of 2002, and then  
3 apparently a further reference in December of 2002 from Mr.  
4 Vaughan to Mr. Evert confirming settlements in the Morris  
5 case, that that would -- I haven't heard the plaintiffs  
6 contest that that would have done anything other than  
7 constitute a written confirmation of a valid settlement.

8 Is that -- am I right about that, Mr. Vaughan and  
9 Mr. Cascino, particularly with respect to where this thing  
10 would have stood say at the end of 2002?

11 MR. MCCOY: Judge, this is Bob McCoy. I'm going to  
12 respond first, because I just want to draw the parameters here  
13 from our side. I'm going to be handling the legal issues.  
14 Mike and Allen will be handling questions that Your Honor has  
15 on the fact issues.

16 And if they overlap into what I consider the legal  
17 issues, I'll interject at that point in time. So that's how  
18 we perceive this. We also have made and raised a concern,  
19 Judge, about the handling of this motion, since we've -- it's  
20 a motion that would effectively be a summary judgment for a  
21 final disposition on the case.

22 And that's -- we raise this question under this 28  
23 U.S.C Section 636. And I didn't -- I didn't myself quite  
24 understand properly what the jurisdictional basis was here for  
25 this motion being considered by Your Honor rather than Judge

1 Robreno.

2                   And I say that because I think jurisdiction's  
3 something important to have that made clear on the record  
4 before we proceed with this type of situation.

5                   THE COURT: Okay. Well I will -- I'm sorry, is  
6 there something more you wanted to add on that point?

7                   MR. MCCOY: I missed what you said, Judge.

8                   THE COURT: I was -- I thought that you were still  
9 trying to speak again. I wondered if there was anything more  
10 you wanted to say on that point?

11                  MR. MCCOY: No. Just that I don't understand what  
12 the jurisdictional grounds are for Your Honor to rule on this  
13 motion.

14                  THE COURT: Okay.

15                  MR. MCCOY: That's my --

16                  THE COURT: All right. Well it is my judgment that  
17 it fits within the general purview of case management that has  
18 been referred to me by Judge Robreno. However, that does not  
19 in any way, Mr. McCoy, preclude you from making a -- your own  
20 -- articulating your own position to Judge Robreno.

21                  What matters I think is whether or not, whatever  
22 determination I make, how that determination would be  
23 considered. Would it be considered simply as a matter for  
24 Judge Robreno to have to reconsider it again de novo, and you  
25 could make that argument to him, or would it be considered as

1 something that he would be -- you know, feel that he would be  
2 obligated to respond to, unless it was determined that it was  
3 clearly erroneous determinations.

4 And you're certainly free to make that argument to  
5 Judge Robreno. What I wanted to do is to try to move this  
6 forward as an initial matter. I would also point out to you  
7 that it is my recollection that -- and I don't think it's  
8 technically a matter of jurisdiction, but it is my  
9 recollection that I previously had been asked by the parties,  
10 I'm not going to recall specifically who initiated it, but  
11 there was never any difficulty expressed by any party with  
12 respect to a motion to enforce settlement that concerned  
13 something that your firm was involved in with Owens Illinois,  
14 some time ago, a year or more ago, which we did -- which we  
15 did rule upon.

16 And there was never any objection made to any of  
17 those rulings, or the basis upon which I have the authority to  
18 make those rulings. So I hear you, I respect your right to  
19 make such an objection to that basis, but I'm not going to  
20 defer from considering the question here now, and providing at  
21 least a report and recommendation, or my own determination to  
22 Judge Robreno, if we have to do that.

23 Let me also say that what I had as I've looked at  
24 the papers, some additional papers that came in this morning,  
25 and I would -- I'm going to submit this to you gentlemen to

1 consider, as to whether or not I would defer from making any  
2 ruling whatsoever, leave that determination entirely to Judge  
3 Robreno -- with Judge Robreno with his permission, and order  
4 you all in here to look at this question from the perspective  
5 of settlement.

6 As I started out today, and this is the direction I  
7 really want to take, is that it was my understanding, and I'm  
8 still waiting for a confirmation of that from -- on behalf of  
9 CVLO, which I'm happy to accept from you, Mr. McCoy or from  
10 Mr. Vaughan, or Mr. Cascino, that this matter was deemed and  
11 perceived to be settled as of the end of 2002.

12 So at some point it appears, and if I'm wrong about  
13 that I suspect you'll correct me, it some point it appears  
14 that agreement was reached between the parties with respect to  
15 the appropriate settlement sum to be provided by -- by the  
16 Viacom entity as of that date.

17 And I, you know, I'm at a complete loss to  
18 understand what happened for eight or nine years subsequent to  
19 2002, but it obviously appears to be the case that the  
20 settlement was ever fully consummated by virtue of a release  
21 having been provided, or funds having been paid.

22 So having said all that, can I go back to my earlier  
23 question, and as you would have seen I have -- I'm  
24 operating --

25 MR. MCCOY: Judge, I still have a couple of items

1 here, before we fully get down to that question that Your  
2 Honor posed. As I then -- I'm not clear from what you just  
3 said, this is something that's within the scope under this 28  
4 U.S.C Section 636 as something that you have been designated  
5 to hear as a result of the general order that was issued  
6 assigning the cases, or of Cascino Vaughan law offices, or if  
7 it's something that's like a specific hearing that you're  
8 conducting to assess the evidence, which is a separate section  
9 of the Statute.

10 I wasn't clear which -- which one we're under.

11 THE COURT: Well there's not been -- there has not  
12 been a specific order of reference as to this specific motion.  
13 The issue was raised, was brought by -- by CBS, and generally,  
14 as you well know, I've been dealing with virtually all of the  
15 motions -- case management related motions.

16 And I saw this, particularly given what we had done  
17 on Owens Illinois, as fitting within that category. And I am  
18 going to proceed on that basis. So if you want to bring this  
19 up with Judge Robreno, you can bring it up with Judge Robreno  
20 afterwards, but you're not going to get me to not take any  
21 action with respect to this, if that's what your purpose or  
22 intent is.

23 MR. MCCOY: What I'm -- I just want to make sure the  
24 jurisdictional points are dealt with here. I mean, what the  
25 Statute says, and what would be appropriate would be a

1 specific designation by -- to you as Magistrate Judge to  
2 conduct these hearings.

3 When we go back to that Owens Illinois situation  
4 that Your Honor was referencing, that's what we had. And that  
5 was by agreement of the parties, and then there was an order  
6 entered that that would be undertaken by the Magistrate Judge  
7 at the time being if a mediator really, Judge Reed.

8 So that's how that came about, and that was passed  
9 on to Your Honor when you took over.

10 THE COURT: Mr. McCoy, first of all, that's not  
11 consistent with my recollection. And I certainly don't have  
12 all those particular documents in front of me.

13 My recollection is that was after -- after Judge  
14 Reed's time. But I've stated what I've stated on this, and I  
15 want to move on. So you can take up your concerns that you  
16 have with Judge Robreno.

17 And to the extent that I get to the point where I  
18 have to write something on this, I will lay out with  
19 particularity the basis upon which I believe I have the right  
20 to -- the right to proceed with respect to this, and you can  
21 accept it or not accept it, and take it to Judge Robreno.

22 So can I have an answer to my question, please?

23 MR. MCCOY: The question -- the question is one that  
24 -- you're talking now about the correspondence from  
25 Westinghouse, and then from Mr. Vaughan?

1                   THE COURT: That's right.

2                   MR. MCCOY: So I'll let Mr. Vaughan go ahead and  
3 give the understanding that he had in representing Cascino  
4 Vaughan Law Office when he wrote that letter back.

5                   MR. VAUGHAN: Good morning, Your Honor. Allen  
6 Vaughan here. Regarding asbestos settlements and Westinghouse  
7 and CVLO here in particular, the custom and practice has  
8 always been that once an agreement or a number had been  
9 established that the defendant would provide a release within  
10 30 days, and generally paid within 30 to 60 days of a signed  
11 release.

12                  And we have to say that it's my experience handling  
13 the majority of these situations in our office that 95, 98  
14 percent of the deals are done within the 60 to 90 days, with  
15 the notable exception discussed, OI.

16                  Here, the defendants did not pay. We have no record  
17 of defendants providing a proposed dismissal order. We have  
18 records we keep, as you recall, we had over 10,000 B reads.  
19 But -- that we were able to find in our basement. But we also  
20 note that there was no scanning of computer records until  
21 approximately over -- around or about 2005.

22                  We have no documentation that we got a release. I  
23 have no recollection of ever getting a release. I have no  
24 record of an attempt to trying to get a signature. What we  
25 have is a cold trail.

1                   And what we also have is CVLO continuing to work up  
2 the case. We sent several pieces of material by email last  
3 evening showing our continued understanding that this case had  
4 not been settled, since it had not been paid.

5                   And we even have in the Court record on the MDL-875  
6 docket order of 10/12/10 the case listed as still being open  
7 as regard to Westinghouse.

8                   So what we find is a cold trail with regard to the  
9 Michael Morris case.

10                  THE COURT: All right. So understanding that you  
11 have no indictment -- let me just back up for a second. What  
12 you've referred to as -- I'm not sure if you used the exact  
13 phrase, but custom and practice with respect to usually  
14 getting releases within 30 days and then payment within 30 to  
15 60 days.

16                  Was that a procedure that was also a custom and  
17 practice in negotiations that you had with Westinghouse?

18                  MR. VAUGHAN: Well here in the letter it's  
19 documented that we would get -- they would make their best  
20 efforts to pay in 2002. The letter is dated September 20th of  
21 2002.

22                  THE COURT: Okay. But my question was whether or not  
23 that custom and practice that you referred to was a custom and  
24 practice that you found in your dealings with Westinghouse and  
25 with Mr. -- I guess it was Mr. Evert at the time?

1                   MR. VAUGHAN: I must say that it's a limited  
2 relationship, but that is true, yes.

3                   THE COURT: Okay. And is there anything in your  
4 materials that indicate at the end of 2002, in 2003, or 2004,  
5 or 2005 that anybody from CVLO made any effort to contact  
6 Westinghouse in order to, you know, determine where the  
7 release was, why the release isn't coming, and, you know, to  
8 get the settlement finalized such that payments could be made  
9 to your client pursuant to whatever agreements had been taken  
10 place?

11                  MR. VAUGHAN: I could find no such record.

12                  THE COURT: Okay. Either way, nothing either --  
13 nothing whatsoever, is that what you're saying?

14                  MR. VAUGHAN: No. And we were also not able to find  
15 a record that the defense provided a proposed dismissal order  
16 or any payment.

17                  THE COURT: Right. Okay. I have that. So what I  
18 had, and I didn't sort thorough everything that was submitted  
19 to us which came in, I guess overnight or early this morning,  
20 some 50 or so pages apparently from your office, from what  
21 Joel tells me.

22                  But what I thought I saw in there was some  
23 communication that picked up again as of about September of  
24 2010. And my question is whether or not September of 2010 is  
25 the first time after December 2002 that there was any activity

1 at all with respect to this case between your firm and the  
2 Evert firm, or any other firm representing Viacom or  
3 Westinghouse?

4 MR. VAUGHAN: Our record shows in September 2007 the  
5 AO12, which the non-bankrupt, unsettled defendant as CBS in  
6 this case. Michael Morris.

7 THE COURT: All right. Good.

8 MR. MCCOY: Meaning that that date when we submitted  
9 an AO12 filing that had that listed.

10 THE COURT: All right. And that AO12 filing copy --  
11 would have been copied to Westinghouse, right?

12 MR. VAUGHAN: Yes, Your Honor.

13 MR. MCCOY: And it would have been served in the  
14 normal procedures of AO12, yes.

15 THE COURT: Yeah --

16 MR. CASCINO: This is Mike Cascino. Mike Evert  
17 would probably remember those boxes he got, I think he and I  
18 had a conversation kind of joking about his office having all  
19 these documents delivered.

20 THE COURT: Okay. So let me go back, if I could ask  
21 Mr. Evert if you'd be good enough to respond, Mr. Evert, was  
22 it -- do you have -- and I fully appreciate maybe some  
23 difficulties of specific recollection to events so long ago.  
24 But is it your understanding, and I'm going to take it that it  
25 was Mr. Vaughan's understanding, that at least as of the end

1 of December that there had been an agreement reached between  
2 Viacom and Mr. Morris, through his lawyers, that that case was  
3 to be settled under very, very broad terms as set out in the  
4 communications from Mr. Vaughan.

5 And would that have been the understanding that  
6 Viacom would have had through you, Mr. Evert?

7 MR. EVERT: Yes, sir.

8 THE COURT: Okay. So do you have any indication of  
9 -- it's also been explained to me by Mr. Vaughan that the  
10 general practice was that he would have understood from other  
11 defendants, and some limited experience I guess with your  
12 office, that a release would have been sent by your office  
13 normally within about 30 days, release would be signed.

14 And once the signed release went back there'd be  
15 payment within something like 30 to 60 days. Broadly  
16 speaking, is that an accurate representation of the way these  
17 things normally worked?

18 MR. EVERT: Yeah. I think, Your Honor, I guess my  
19 broad answer would be yes. I mean, the only quibble I would  
20 have is that obviously we've resolved a number of cases over  
21 the years with Cascino Vaughan, and we typically use the same  
22 release.

23 So whether or not there was an expectation in my  
24 mind that we were to send them a specific release for the  
25 Morris case, or whether or not the understanding was that we

Evert - Argument

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1 would just use the same release, I can't recall.

2 I do, you know, my only -- I do recall being in  
3 Philly, and I do recall Bruce Lassman being there, and I do  
4 recall Allen and I sitting in a room, but beyond that, I don't  
5 recall very much.

6 But, yes. Certainly the expectation would be and  
7 the agreement would be that the release would be of a form  
8 that was acceptable to both parties. Whether or not we would  
9 just use a release from a previous case, or we would send them  
10 a specific one for this case, I don't know.

11 I just don't recall.

12 THE COURT: All right. Is there any indication of  
13 any activity, can you tell me, from your files, or from  
14 Viacom's files, as to any question having been raised as to,  
15 you know, where is the release, let's get the settlement  
16 finalized? You know, anything of that sort, up until the next  
17 indication of any activity on this, which appears now to be  
18 the submission of the AO12's by the CVLO in 2007?

19 MR. EVERT: Yeah, the only comments that I would  
20 have between 2002 and 2010, Your Honor, would be, I am sure  
21 that at some point we would have either been served or had  
22 access to the AO12. Mr. Cascino is right, he and I did have  
23 a conversation about a bunch of records he sent to us.

24 But I don't think -- if they served the AO12 on May  
25 31, if we didn't get a copy, we certainly have gotten one.

Evert - Argument

17

1 So, you know, I don't think that's much of -- I'm sorry, they  
2 served it on I think in September of '07, May 31 was when  
3 Judge Robreno issued the order.

4 Then the only other activity that we've got relevant  
5 to this matter is, the Court may know that we settled six  
6 cases on that particular day, Mr. Vaughan and I did. And  
7 according to our records, the last one that was paid was --  
8 the release was submitted in July of 2008, which because of in  
9 these matters with estate -- estates and representatives  
10 getting appointed and stuff like that, it's not unusual from  
11 our perspective for several years to pass before a settlement  
12 is consummated.

13 THE COURT: Okay. The six cases you're referring  
14 to, are you referring to the cases identified in Mr. Vaughan's  
15 letters of September the 20th?

16 MR. EVERET: Yeah. The two letters of September the  
17 20th.

18 THE COURT: Right. Each of which identify three  
19 cases, Morris being one of them?

20 MR. EVERET: That's correct. And the last case  
21 submitted for payment was actually the Neu case, which is on  
22 the other -- N-E-U --

23 THE COURT: Yes.

24 MR. EVERET: -- which is the other letter, and it was  
25 submitted in July of 2008 and CBS paid it in August of 2008.

1                   THE COURT: Do you have any indication with  
2 specifics, or generally, about the timing of the payments in  
3 the other five, or maybe other four, since apparently there  
4 was no payments ever made in Morris?

5                   MR. EVERET: I'm sure I do, Your Honor, but I don't  
6 have it in front of me. I just asked my office for the last  
7 one that was paid.

8                   THE COURT: Yes.

9                   MR. EVERET: So it would have occurred prior to that.

10                  THE COURT: Okay. Now my understanding is that when  
11 you all were before Judge Reed, that -- and the -- and the  
12 first interrogatories were to be propounded, that there were  
13 interrogatories propounded, and were there -- was there  
14 discovery ongoing during Judge Reed's time with respect to the  
15 Morris case? Mr. Evert, can you answer that?

16                  MR. LAUTH: This is Richard Lauth, Your Honor. I  
17 can answer that. I think from anecdotal evidence, there was  
18 discovery going on in the Morris case. They were submitting  
19 interrogatory responses and other discovery in that case, just  
20 like they were the rest of their cases.

21                  Westinghouse did not propound any specific discovery  
22 to plaintiff in the case, though. We were not actively  
23 litigating it, because we considered it settled.

24                  THE COURT: Okay. Well when you say you considered  
25 it settled but what -- what did you do, even as of that time,

1 about -- or any prior to that time to get back to the  
2 plaintiffs to try to find out what happened to the release or  
3 why no release was being submitted to you?

4 MR. LAUTH: That was one of the -- that was the item  
5 I sent to you yesterday afternoon that we submitted around  
6 4:00 yesterday, Your Honor. Joel will certainly recall this,  
7 I'm not sure whether or not you will, because it predated you  
8 to the Cascino Vaughan litigation.

9 But right toward the end of Judge Reed's tenure, he  
10 had asked the parties to endeavor to reconcile their case  
11 list, because there were so many discrepancies that were  
12 considered open by one party or another.

13 Bob Knox of the Cascino Vaughan firm sent some  
14 correspondence to us in September of 2010 enclosing their case  
15 list which they considered open. Morris did appear on that  
16 case list. And in April of 2011, I sent a letter to the  
17 Cascino Vaughan law firm specifically identifying Morris,  
18 among a number of other cases that we considered as settled,  
19 or otherwise requiring dismissal.

20 I flagged that to them, that was on the forty  
21 something -- it was on page 37 of the PDF that I sent  
22 yesterday afternoon to the Court. And in that letter, I said  
23 with regard to those cases that we previously considered  
24 settled or otherwise requiring dismissal, I requested that if  
25 CVLO had any disputes on that issue that they contact me

1 immediately to provide an explanation. And on that point, I  
2 never heard anything else.

3 That was the first attempt to reconcile this issue  
4 with Cascino Vaughan. A little over a year later in June of  
5 2012, and I believe, I'm trying to remember what prompted me  
6 to send the email, but I believe it may have been depositions  
7 being noticed that may have impacted the cases.

8 I sent an email to Kristen Stambaugh, who was with  
9 Cascino Vaughan at the time, requesting a dismissal in Morris  
10 and providing her the settlement documentation that's part of  
11 this motion to enforce, and requesting that a dismissal be  
12 filed in Morris, in another case called Binder.

13 THE COURT: All right. Now hang on a minute, Mr.  
14 Lauth. So as of that point in time in order for the dismissal  
15 to be effectuated, I would of thought it would have had to  
16 have been the case that there would be a satisfaction that  
17 releases had been signed and settlement funds had been paid.

18 Did you have that satisfaction at the time?

19 MR. LAUTH: No, we do not. We have not received a  
20 release from them on the Morris case.

21 THE COURT: So I don't understand how you would ask  
22 them to see to effectuating a dismissal under that  
23 circumstance.

24 MR. LAUTH: In my correspondence, I asked them to  
25 submit a release and sign a dismissal, so that they could be

1 paid.

2 THE COURT: And this was in April of 2011?

3 MR. LAUTH: No, that is in June of 2012.

4 THE COURT: June of 2012. Okay. And you're telling  
5 me that June of 2012 -- was the next thing you heard about  
6 this, Mr. Cascino's note or email of November 2012?

7 MR. LAUTH: That's correct. On November 8th, 2012,  
8 Mr. Cascino emailed me seeking consent to the remand of the  
9 Morris case. And at that point in time I replied back, less  
10 than an hour later, forwarding him the correspondence that I'd  
11 sent earlier to his office reminding him that it was subject  
12 of a settlement agreement, and requesting that they submit a  
13 release.

14 THE COURT: You mean the -- when you said the  
15 correspondence earlier, you meant the June 2012 correspondence  
16 to Stambaugh?

17 MR. LAUTH: That's correct.

18 THE COURT: Okay. So what I need to understand is  
19 when the AO12 submissions were made in September of 2007, I  
20 don't remember enough about how those things were being done  
21 at the time, was it -- maybe the depository was being used,  
22 but there -- were there notification to Westinghouse that an  
23 AO12 submission had been made on behalf of Mr. Morris back in  
24 September 2012, or 2007?

25 MR. EVERT: Probably -- this is Michael Evert,

1 Judge, probably a better one for me to answer.

2 THE COURT: Right.

3 MR. EVERET: The direct answer is, I don't recall.

4 But my assumption is that, as I tried to say earlier, that if  
5 we had wanted to find the AO12 for the Morris case, we could  
6 have found it.

7 Whether it was -- you know, whether we had a copy  
8 directly sent to us, whether we had it in our office, whether  
9 it was in a depository, I can't answer any of those questions.  
10 But we certainly could have found the AO12 on the Morris case  
11 had we wanted to find it.

12 THE COURT: All right. Okay. So I guess the way in  
13 which I was looking at this earlier would have to do with, as  
14 I -- and I think I set this out in this email, and what I'm  
15 troubled about, and I'm happy for Mr. McCoy or anyone else to  
16 chime in on this, is if there is in fact an agreement to  
17 settle, and if there's a sufficient basis upon which to make a  
18 legal determination that there is an agreement to settle, an  
19 issue has been raised with respect to the enforceability of  
20 that agreement, and the extent to which the enforceability of  
21 that agreement is impacted by the passage of time.

22 The parties seem to agree that Wisconsin law would  
23 apply. And my understanding from the parties that Wisconsin  
24 law would provide that settlement agreement would be deemed  
25 like any contractual action and there would likely be a

1 six-year limitation would be applied.

2                   And I haven't seen either side suggest that's not  
3 the case. So it seems to me that the question arises,  
4 defendants apparently take the position that there is, I  
5 guess, the time within which the statute would begin to run  
6 would be that time of the agreement. It would seem to me that  
7 the time at which the Statute would begin to run would be  
8 rather at the time of the breach.

9                   And that's, for me, the difficult question. If  
10 there is a breach, and there appears to be, who's responsible  
11 for the breach, and when did the breach occur? So I guess I'm  
12 going to ask either counsel to address that, and I'd ask Mr.  
13 McCoy to address it first.

14                  MR. McCOY: Judge, I will. But I think there's one  
15 more item that we need to make clear on the record.

16                  THE COURT: Mr. McCoy, let me -- if you'd be good  
17 enough to just answer my question first, and then I'll give  
18 you a opportunity to go on to whatever else you want to say.

19                  MR. McCOY: Judge, the answer to that question is  
20 that there was no agreement, based on custom and practice.  
21 That's how the situation develops. Because the trail is cold.  
22 We just know there was no agreement based on custom and  
23 practice, because there wasn't a release and there wasn't a  
24 payment.

25                  So -- and it's our position on this that that's the

1 answer. And if Westinghouse thought different, then they had  
2 six years from the date of Mr. Vaughan's letter, or you could  
3 probably extend that out based on the custom and practice of  
4 completing the releases and making the payments within a  
5 period of about 90 days.

6 And that would give them six years after that to  
7 enforce that agreement, if they thought different. But the  
8 position of our firm is there was simply no agreement, because  
9 based on custom and practice things didn't happen, and now the  
10 trail is cold about that. And that's what Statute of  
11 Limitations are about. There isn't a sufficient record after  
12 this long passage of time to be able to figure out exactly if  
13 anything happened.

14 We just know there was no payment, no release,  
15 therefore, no agreement based on custom and practice. So if  
16 Your Honor believes that there's a need to find a breach, we  
17 disagree with that position. But if there was a breach, it's  
18 probably better the words -- we would need to find a breach  
19 based on what Your Honor's saying, I think the better way to  
20 put it is, there was simply non-performance here of this  
21 agreement, and if so, within that reasonable period of time  
22 based on the custom and practice, then there's a six-year  
23 Statute of Limitations.

24 And so that would be the point where I would say  
25 there's been non-performances, that period of about 90 days

1 based on what Mr. Vaughan said, and Mr. Evert confirmed about  
2 the practices concerning releases or payments in these  
3 situations.

4 So that's how we see it.

5 THE COURT: All right. Mr. Lauth, or Mr. Evert, do  
6 you want to respond to that?

7 MR. LAUTH: Your Honor, we believe there was clearly  
8 an agreement to resolve the case. We believe that we were  
9 ready to consummate that agreement upon submission of a  
10 release. We believe that the -- no one has given any  
11 indication that there was an potential notice to CBS of a  
12 breach, until the submission of the AO12.

13 Whether we saw it or not, if you assume that that's  
14 notice of a breach, it was not submitted until September of  
15 2007. We're still well within the six years based on that  
16 discovery of the breach. And so we believe there was an  
17 agreement and the settlement was enforceable.

18 And the fact that one of -- at least one of the six  
19 cases that was resolved on that same day wasn't submitted  
20 until 2008, is further evidence of the fact that these cases  
21 often take a long time, and it's not until we receive notice  
22 of the breach that the Statute should begin to run.

23 So we absolutely believe there was an agreement to  
24 settle the case. We absolutely believe that we had the right  
25 to enforce it and we're within the Statute.

1                   MR. McCOY: I'd like to add a couple of more things,  
2 Judge, if I can --

3                   THE COURT: Is it right on this specific point?

4                   MR. McCOY: Yes.

5                   THE COURT: Okay. Go ahead, Bob.

6                   MR. McCOY: Yeah, there's a case in Wisconsin this  
7 CLL Associates Limited Partnership case, which was 174 Wis.2d,  
8 604 Supreme Court of Wisconsin 1993 decision, where it talks  
9 about the discovery rule and contract actions, meaning you  
10 have an extension on your Statute of Limitations period  
11 because you didn't discover that there was a breach or a  
12 non-performance.

13                  THE COURT: Right.

14                  MR. McCOY: The Court said that, and I'm quoting  
15 from the opinion, and they were comparing it to tort law. But  
16 the Court says:

17                  "In addition to the distinctions between contracts  
18 and tort law, we are persuaded by the fact that the Wisconsin  
19 Legislature has expressly rejected discovery rule when  
20 enacting the contract statute of limitations. The Court  
21 concludes here that there is no discovery rule applicable to  
22 contract statutes."

23                  Which is what I understand the position of CBS and  
24 Mr. Evert's explanation to be, which is, we didn't discovery  
25 the breach until later.

1                   And that simply doesn't matter. There's no  
2 discovery rule. The breach occurred when, based on custom and  
3 practice, there wasn't performance through a release or  
4 payment. And there's no extension of that under the discovery  
5 because there's no discovery rule.

6                   THE COURT: Okay.

7                   MR. MCCOY: Now I would say further, Judge, pointing  
8 out in this opinion, if you read through it, it says, we  
9 recognize -- this is the Court:

10                  "We recognize that a contract breach may sometimes  
11 be latent, and in practical terms undetectable."

12                  So, again, the situation here of people not knowing  
13 that there was, at least on Westinghouse's claim that they  
14 didn't know about there was a breach, is dealt with in this  
15 opinion by acknowledging that there are these latent,  
16 undetectable situations, which it doesn't matter, there's  
17 still no discovery rule.

18                  So that's the Wisconsin law, and that would govern  
19 the position that somehow this rule -- that there's a  
20 discovery rule that extends out the period of time to 2007, or  
21 whenever Westinghouse suggests it should be extended out.

22                  There's no extensions allowed under Wisconsin law.

23                  THE COURT: Okay.

24                  MR. LAUTH: Your Honor, if you want to hear comments  
25 on that I'm glad to give them.

1                   THE COURT: Yeah, go ahead. Go ahead.

2                   MR. LAUTH: I was just going to say, Your Honor,  
3 that what is critical to Mr. McCoy's analysis -- first of all,  
4 there is the discovery rules from discovery of the breach.  
5 And what's critical to his analysis is that purported common  
6 practice of 60 to 90 days, and that is belied by the fact that  
7 the Neu case was submitted in 2008, and paid in 2008.

8                   And, frankly, Your Honor, if the shoe was on the  
9 other foot, they would submit a release, if we refused to pay,  
10 that's when the breach would occur.

11                  So the discovery of the breach doesn't come -- there  
12 is no common practice that dictates that the breach occurred  
13 within 60 or 90 days, we would dispute that.

14                  THE COURT: All right. I'm not sure if this is  
15 applicable to this question, but it might be. In the letter  
16 that Mr. Lauth prepared in April of 2011, which was submitted  
17 to us late yesterday, there is reference to what is identified  
18 as Attachment B.

19                  And I -- it's unclear to me precisely the number of  
20 cases. I think it's something in excess of 400 cases that  
21 might be identified on that attachment, and Morris being among  
22 them.

23                  And I'm -- my -- it looks as if, at this point, in  
24 April of 2011 that there is some dispute between Cascino  
25 Vaughan and Evert -- the Evert firm with respect to cases that

1 are still pending, or whether or not cases have been resolved,  
2 and those are the cases that are, I guess, set out by this  
3 exhibit. That's the way this attachment -- that's the way  
4 that I see it.

5 So I'm going to ask Mr. Lauth if that's right, I  
6 mean, if my understanding is right of what was indicated  
7 there, and to explain something about what happened with these  
8 other cases, and to the extent those other cases might say  
9 something about custom and practice, if you've got as many as  
10 400 cases with the Cascino Vaughan firm, and between the  
11 defense firm, the Evert firm, and Cascino Vaughan firm, there  
12 are apparently 400 plaintiffs out there, in excess, whose  
13 cases are apparently in limbo.

14 And the lawyers are unable to agree whether or not  
15 they've been settled or unsettled, which sounds rather  
16 troubling to me, frankly. But help me out here and explain to  
17 me if that's exactly what you were trying to say, Mr Lauth,  
18 and what the -- how things came to be in that fashion and what  
19 came of it after April 12th of 2011?

20 MR. LAUTH: Your Honor, you are correct in your  
21 assessment that there were in excess of 400 claims on the  
22 disputed open list. But the important thing I guess to  
23 realize is that only a -- that the vast majority of those  
24 claims were claims that were Indiana claims, for example,  
25 which the Cascino Vaughan Law Offices had agreed to dismiss

1 based on the applicable Statute of Repose defense, that  
2 happened under the Judge Reed tenure. I haven't gone back and  
3 looked to see how many of those 406, if any, still survive.  
4 But the amount of those claims that would have been prior  
5 settlement would have been, you know, small, small percentage  
6 of them.

7 Morris being one of them, Binder, which we've --  
8 which I mentioned, was a paid claim would have been another  
9 one. But I have not gone back and recreated how many of the  
10 400 or so fit into that characterization.

11 And where are they now? I think the short answer is  
12 they've been dismissed due to winnowing down process from  
13 Judge Reed and also from Your Honor of these claims from the  
14 thousands to the hundreds.

15 THE COURT: Mr. McCoy, can you address that? Or Mr.  
16 Cascino, or Mr. Vaughan.

17 MR. McCOY: Judge, this just came in yesterday.

18 THE COURT: Yes.

19 MR. McCOY: If we're having a factual evidentiary  
20 hearing, I don't want to commit ourselves. But if you'd give  
21 us a moment, let me see if I can give you an answer.

22 THE COURT: Okay. I appreciate that. I'll  
23 certainly give you the time you need.

24 MR. McCOY: I'm going to put us on mute here, Judge.

25 THE COURT: Yes, that's fine.

1 MR. McCOY: One second.

2 THE COURT: That's fine.

3 MR. McCOY: I'll get back to you.

4 THE COURT: That's fine.

5 (Pause)

6 MR. McCOY: Judge?

7 THE COURT: Yes.

8 MR. McCOY: I'm back. Okay. Yeah, we've -- we  
9 can't answer the question right now. The question was what  
10 response was made to this April 12, 2011 letter to Mr. Lauth  
11 with these attachments and the 400 cases, we can't answer  
12 right now. We don't know. We have to go back through the  
13 records and see if anything was -- specifically was sent on  
14 this.

15 THE COURT: Okay. All right. So let me just ask  
16 just a couple of more questions with respect to what -- where  
17 there is -- what there is, or what there might be with respect  
18 to this case now. And I'm going to ask you, first of all, I  
19 guess it's -- I guess you, Mr. McCoy, I'm not sure on your  
20 side, or Mr. Cascino, and Mr. Lauth, as to whether or not you  
21 have gone back and looked at the underlying merits with  
22 respect to this case, whatever number it was that you may have  
23 discussed agreement or "agreed," understanding that Mr. McCoy  
24 says no agreement, but there was an -- obviously a reference  
25 to a number, which I don't have, it was blocked out in your

1 materials to me, which is fine, by which the case perhaps  
2 might be resolved.

3 And if I'm guided by that, have you had any further  
4 discussions with respect to whether or not this case could now  
5 be deemed resolved, based upon whatever happened previously,  
6 or based upon, you know, a fresh consideration? Mr. Lauth?

7 MR. LAUTH: Judge, there hasn't been any further --

8 MR. CASCINO: Excuse me, this is Mike Cascino.  
9 Richard and I -- I sent a letter to Richard saying, can we  
10 resolve this matter, and he responded by saying that, you're  
11 the kind of person that once a settlement is made, a  
12 settlement is a settlement, and they were willing to take  
13 their chances in Court.

14 So I did make the overture of trying to resolve this  
15 matter.

16 THE COURT: Mr. Lauth?

17 MR. LAUTH: Well, Your Honor, I said we'd be glad to  
18 honor our settlement of the matter.

19 THE COURT: Okay. And would you be glad to honor  
20 your settlement of the matter and take into account in  
21 connection with that that there's been no payment on the  
22 settlement for in excess of 10 years, and agree to, maybe be  
23 legally to entitled to, but agree to the payment of interest  
24 over the 10 years for whatever that settlement amount was?

25 MR. LAUTH: The timing for payment would have been

1 from receipt of the release, which we haven't received one  
2 yet. So that would be the time that the clock would start  
3 running on when the settlement was due.

4 THE COURT: Well --

5 MR. EVERET: I'm sorry, Judge, this is Michael Evert  
6 I misunderstood your question, I think. What did you ask?

7 THE COURT: I'm putting on a different hat now. And  
8 the different hat I'm putting on is kind of as a settlement  
9 Judge. And my question would be whether or not you guys would  
10 consider, and I would be -- this is what I was suggesting  
11 before and whether or not Judge Robreno makes a hard  
12 determination on all this and I sit back to you and talk to  
13 you by way of settlement.

14 But you would consider a resolution which would be  
15 predicated upon the proposition that this case would be  
16 settled based upon whatever number was agreed upon or  
17 discussed in the communications with Mr. Vaughan back at the  
18 end of 2002, with an allocation, and make an assumption that  
19 there would have been a release submitted and payment would  
20 have been, you know, legally due and owing, and I understand  
21 there's no release submitted apparently, but, you know, assume  
22 you've got approximately 10 years worth of interest.

23 It obviously would add up, I don't know what the  
24 legal interest rate is in Wisconsin, but would add up to be a  
25 healthy sum in prejudgment interest.

1                   And given the fact that your client has had that  
2 money and hasn't had to spend that money for ten years, you  
3 know, perhaps there's some equities that flow in that  
4 direction, would you give consideration to, and if you want to  
5 just report back on this separately, that would be fine, but  
6 give some consideration to the question of a resolution on  
7 that basis, generally speaking?

8                   MR. EVERET: We'll certainly talk to the client about  
9 it, Judge, and --

10                  THE COURT: All right.

11                  MR. EVERET: -- if we could get back to you, then  
12 we'll be glad to do that.

13                  THE COURT: All right. And, Mr. Cascino, do you  
14 think that you would be willing to talk to your clients about  
15 it on that basis?

16                  MR. MCCOY: Judge, there's been a lot of work done  
17 on these cases since, that provided additional evidence. So  
18 the answer to that is, our firm certainly views this case in  
19 light of what we now have in the way of evidence, and we're  
20 obligated to treat it in that vein in representing the client.  
21 And by that, the factual evidence is just, I mean, the case  
22 was settled based on, I think that Mr. Vaughan said no  
23 exposure to turbines. We didn't even pursue switch gear  
24 claims back in those days.

25                  And I'm talking about the 2002 agreement. So today

1 the case has a whole different set of evidentiary points that  
2 we would be raising at a jury trial and for summary judgment  
3 purposes, if we had to, that involved both switch gear  
4 exposures and the exposures to Westinghouse turbine.

5 THE COURT: Mr. McCoy, that sounds to me like a very  
6 long way to simply answer my question as no, you wouldn't be  
7 interested in talking to your clients about the formulation I  
8 suggested. Am I right about that?

9 MR. McCLOY: Yes, that's right, Judge.

10 THE COURT: All right.

11 MR. McCLOY: Not that we're not interested, Judge,  
12 but what we're saying is, from a practical standpoint of our  
13 obligations as counsel ,we have all this evidence now that we  
14 can't discount that we didn't have in 2002.

15 THE COURT: All right. Hang on a second. Thank  
16 you. Hang on one second.

17 MR. McCLOY: When the -- when this thing went  
18 through, all the procedures, only now to be told, by the way,  
19 now that you worked up your case, we have something 10 years  
20 ago we didn't pursue that we want to pursue now.

21 THE COURT: Hang on one second.

22 (Pause)

23 THE COURT: Okay. I'm going to ask Mr. Evert to  
24 pursue, or Mr. Lauth to pursue what Mr. Evert referred to with  
25 respect to these other six -- these other cases. We have the

1 six cases that are identified in the correspondence from Mr.  
2 Vaughan to Mr. Evert in September of 2002.

3 And there's one of which apparently was paid in  
4 2008, and I want to hear what the defendants -- I want to  
5 receive from the defendants a correspondence that would  
6 particularize the question of as to each of those cases. I  
7 mean, I have what we have in Morris, but to have something  
8 anew. But as to the other cases, at what point in time was it  
9 that AO12's were submitted with respect to those cases.

10 At what point in time was it releases were submitted  
11 in those cases? And to the extent that some of those cases  
12 were paid, at what point in time was it that those cases were  
13 paid?

14 I'm hearing that -- and it's not clear to me the  
15 full extent of the pattern and practice that would have  
16 existed between these particular parties, but that to the  
17 extent that matters, and it may to us, the information with  
18 respect to that might have some particular bearing.

19 So I'm going to ask you if you can pull that  
20 together. And you tell me if this is -- I would think this  
21 could be done certainly within a week, Mr. Lauth?

22 MR. LAUTH: Yes, Your Honor.

23 THE COURT: And, obviously, you'd provide a copy to  
24 Mr. McCoy. And Mr. McCoy would give me a response to that  
25 within a week from that date. And then we would make a

1 determination from that point.

2 Okay?

3 MR. LAUTH: Is a letter brief acceptable?

4 THE COURT: Yes.

5 MR. LAUTH: Or a letter submission?

6 THE COURT: Letter brief is fine. Mr. McCoy, are  
7 you with me?

8 MR. MCCOY: Yes, I understand what Your Honor's  
9 asking for. We'll submit that, but I have one other request.

10 THE COURT: Yes. Go ahead.

11 MR. MCCOY: I would like to be able to submit a  
12 surreply on this case, because in this situation we were faced  
13 with a motion to enforce, and in reply Westinghouse has raised  
14 the question of a breach and the necessity of that.

15 Which is a new issue that we wanted to make clear of  
16 our position on that.

17 THE COURT: Okay. I'll give you the opportunity to  
18 file a surreply within one week from today. And within that  
19 one week, also Mr. Lauth will have submitted his letter on the  
20 question about these other -- the totality of all these six  
21 claims. And then you will give me a response in the following  
22 week with respect to your response to that letter.

23 If you don't feel you need to, or if you feel you're  
24 able to accept what Mr. Lauth presents about the factual  
25 circumstances of those cases, just simply indicate that, and

1 then we'll give you a determination promptly -- promptly after  
2 we receive those submissions.

3 Mr. McCoy, at one point you said you had another  
4 point, and I was trying to hold you to where I was at the  
5 time. Is there something else you wanted to bring to my  
6 attention on this?

7 MR. MCCOY: Judge, the only -- what we can -- let me  
8 put it this way, we'll just put that in the reply.

9 THE COURT: Okay. That's up to you.

10 MR. MCCOY: Surreply. And I do want to just point  
11 out one other thing. Which is, I was just looking through the  
12 records, and at least as of November 30th, 2010, Judge Reed  
13 had issued orders about the procedures in the Owens Illinois  
14 agreements to be resolved.

15 So like Your Honor said, I'm not sure that it  
16 matters much but this -- the Owens Illinois did initiate and  
17 was the subject of many orders that were by agreement under  
18 Judge Reed.

19 THE COURT: Okay. But, you know, ultimately, I  
20 think it got resolved by virtue of -- by the time it got  
21 resolved, it got resolved by my opinion that obviously took  
22 place after Judge Reed had retired.

23 MR. MCCOY: Certainly. And we certainly remember  
24 that opinion, and appreciated it well when it came in. But  
25 I'm saying is that was done pursuant to the agreement of the

1 parties.

2 THE COURT: I get your point. Okay. I get your  
3 point. All right.

4 MR. MCCOY: Yes. I just think the jurisdictional  
5 point here needs to be resolved. It just seems like Your  
6 Honor's basically conducting this proceeding under this second  
7 section of 28 U.S.C. Section 636, which is to gather the  
8 evidentiary facts. And from what Your Honor just said, it  
9 sounded like that the recommendation for the decision is going  
10 to be coming through Judge Robreno.

11 That's what I gathered but --

12 THE COURT: Well, as I said, I will comment  
13 specifically upon that, as to the basis upon which we see the  
14 order of reference, and that will give you at least my view  
15 with respect to what it means in terms of the effect of it,  
16 but that obviously it's going to be subject to whatever it is  
17 you're able to convince Judge Robreno about.

18 So you're not -- I'm not foreclosing you from  
19 anything here. I'm just -- I'm just telling you that we're  
20 going to give this a look whether -- what Judge Robreno does  
21 with the look, is going to be up to him. And you can, you  
22 know, make your effort to influence him, or argue to him one  
23 way or another, depending upon what -- I suppose depending  
24 upon what the resolution is from our perspective. So,  
25 gentlemen, thank you very much for giving me the time today,

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1 and we at least have a way forward with this thing now. Thank  
2 you,

3 ALL COUNSEL: Thank you, Judge.

4 THE COURT: Take care.

5 (Recess taken, 11:58 a.m.)

6 (Transcriber Change)

7 (Beginning of afternoon session 2:57 p.m.)

8 THE COURT: Good afternoon, Judge Strawbridge is on.

9 Who's on for plaintiff

10 MR. CASCINO: Your Honor, Mike Cascino. Kevin  
11 Hanbury is here, another attorney, and Jason Sheen, my legal  
12 assistant, is here.

13 THE COURT: All right, good. Thank you very much,  
14 Mr. Cascino. And for GE?

15 MR. FONSTAD: Good afternoon, Your Honor. This is  
16 John Fonstad, and in addition my colleagues, specifically Tim  
17 Kapshandy and Ed Kenney are on the line.

18 THE COURT: Okay. Anybody else? Okay.

19 Okay. I think that what I want to do here is to  
20 kind of give you the current state of my thinking on this  
21 motion and get you to respond to it, rather than to have you  
22 all go through full presentations.

23 There's been a healthy written submission on the  
24 motion, and a response and a reply. We have been through  
25 them. We've been through the applicable interrogatories and

1 requests to produce. And I'm going to give you what I would  
2 characterize as kind of an indication of leaning of where  
3 we're going, and then as I say, give you a chance to reply.

4 First off, I appreciate from GE's perspective the  
5 positions articulated with respect to the lack of timeliness  
6 of the discovery. I would conclude however that under the  
7 overall circumstances of the way these cases have progressed,  
8 that I'm not going to preclude the interrogatories from going  
9 forward or being answered, you know, appropriately, simply  
10 based upon the question with respect to any late requests for  
11 discovery as posited by GE or any delay between the time of  
12 the answers and the time of the filing of the motion.

13 And I want to proceed rather to the question of the  
14 merits of the particular interrogatories and the interrogatory  
15 responses. So I'll do that now but I'll give you an  
16 opportunity, if you want, Mr. Fonstad, to try to elaborate on  
17 that. But let me move to the particular interrogatory answers  
18 if I could.

19 I think the first, the threshold question as I see  
20 it, is the issue with respect to the extent to which the  
21 plaintiffs have provided information pertaining to Mr.  
22 Sypchalla's potential exposure to GE related products. And  
23 Mr. Fonstad has effectively demonstrated what certain  
24 limitations are, including an apparent reliance upon a  
25 deposition which has been quashed -- I'm referring to Mr. Sal

1 or Sallie (sic) or something, and some other bits of  
2 transcripts of depositions which apparently indicate that  
3 particular witnesses that have been cited by the plaintiffs  
4 have not articulated or have not testified specifically that  
5 they ever actually saw Mr. Sypchalla in the presence of  
6 something that they could identify as GE parts or working in  
7 specific manners in which there would have been some direct  
8 specific evidence with respect to exposures.

9           Nevertheless, as I read this and as I see this, I  
10 understand it to be the case that there's at least evidence  
11 that there were GE engines on two, apparently two, at least  
12 two apparently types of aircraft that were being worked on,  
13 referring to these Falcons and these Challengers, and as I  
14 understand it anyway, and that there was some testimony from  
15 certain of the witnesses that there were these kinds of  
16 aircrafts that were at certain of the locations involved. I  
17 think the principal focus seems to be this KC Aviation  
18 location during the time frames that Mr. Sypchalla worked  
19 there and where generally that he would have been working  
20 there.

21           And I'm satisfied that for the purpose of discovery,  
22 certainly not -- it would be an entirely different question as  
23 to whether or not this establishes legal causation. But I  
24 think for the purposes of moving forward to the next step with  
25 respect to discovery, that that does trigger enough that it

1 would be appropriate for the defendant to apply some kind of a  
2 response.

3 Now, the next thing that strikes me is that there is  
4 apparently some evidence, I don't know how extensive it was,  
5 of something in the nature of a meet and confer, at least it  
6 was so certified in one of the paragraphs of the motion which  
7 was filed by Mr. Cascino.

8 But I have to tell you that as I look through this,  
9 I kind of thought to myself, wouldn't this have been more  
10 productive to have been done in the mode of a 30(b)(6) type  
11 deposition where there could have been some true explanation  
12 provided with respect to the nature of the manner in which GE  
13 does or does not keep or maintain records.

14 It is implicit, as I see it, and perhaps explicit  
15 from other information that's out there, and I suspect Mr.  
16 Fonstad will make some admission explicitly with respect to  
17 some record keeping having been done by GE.

18 I assume, and there's probably a record in the  
19 various places, that given GE's involvement as a frequent  
20 defendant in asbestos litigation, there's been some  
21 organizational efforts with respect to the maintenance of  
22 certain data.

23 And I would have -- I want to focus a lot of the  
24 discussion that we have today on what the circumstance of that  
25 data collection is, and how that data collection would bear

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1 upon the questions with respect to burden.

2                   And that's the -- that's an area that I would have  
3 thought or I would have hoped that there would have been  
4 exchange in terms of an extensive and meaningful meet and  
5 confer between Mr. Cascino and Mr. Fonstad or some other  
6 representative of their firms, in order to try to explore  
7 things like, you know, what are the types of engines that  
8 would -- that they might have used on these particular  
9 aircrafts that have been identified, the admission to certain  
10 GE engines that are sometimes used on these aircraft, during  
11 what time period, during the time periods that are involved,  
12 which I appreciate it's a broad time period, but at least has  
13 been limited somewhat from what it was originally down to, as  
14 I understand it, 13 years from 1978 to 1991 at this location.

15                   I don't know whether or not GE tracks records based  
16 upon a particular location where someone works. It strikes me  
17 they may or may not, I don't know, but I would want to hear  
18 about that. I thought maybe I did see something in one of  
19 your responses, Mr. Fonstad, that there was no tracking on  
20 that basis, in terms of the sales records which are in some of  
21 the earlier interrogatories, 2 and 3 and 4 I think.

22                   But to the extent to which there would be records  
23 that would show sales of the products to particular employers,  
24 it seems to me it needs to be refined. I would guess that the  
25 real question ought to be whether or not they are -- may be

1 employers I guess, but the extent to which they would provide  
2 parts to those folks who would be the companies that would be  
3 working there, who would be in a position to purchase the  
4 parts.

5 I'm just thinking of a situation where -- and I  
6 don't know if this is applicable with Sypchalla -- who might  
7 simply work for a, you know, a delivery person and would show  
8 up and would be on the site for some period of time, even  
9 though his particular employer would not have been the enemy  
10 that would have acquired, that would have purchased the  
11 engines.

12 But I think these are the kinds of things that I  
13 would have expected some discussion about. And I'm going to  
14 -- the bottom line of this is that I'm very inclined to order  
15 that there be a robust meet and confer process dealing with  
16 some of these things, but I do want to hear, I think initially  
17 from Mr. Fonstad with respect to some elaboration on the way  
18 and the manner in which GE records are kept, as it would  
19 relate to a significant narrowing -- and I appreciate, Mr.  
20 Fonstad, that you may have taken a position that there has not  
21 been a sufficient narrowing, or the manner in which any such  
22 narrowing might have been done -- but nonetheless a narrowing  
23 that would go to engines or engine parts that would be related  
24 to the engines, aircraft engines used on these aircrafts that  
25 have been identified at this location during this time period.

## Colloquy

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1                   So that's generally the way I see all this. And  
2                   frankly, part of me says I wish I hadn't -- I wish I had  
3                   picked this up and looked at it rigorously back in November  
4                   when this motion was first filed and maybe we could have cut  
5                   through some of the delay that we've had so far.

6                   But, this is where we are now, and that's the  
7                   inclination I'm at. So, Mr. Fonstad, let me hear from you --  
8                   I'll give you the opportunity to address any particular issue  
9                   you want, but as you've heard, I really want you to focus upon  
10                   the manner in which GE does maintain whatever records it may  
11                   have.

12                   MR. FONSTAD: Thank you, Your Honor. And I'll  
13                   address that corporately, but first, just on the procedural  
14                   issue. I respect your ruling. But the only thing I would  
15                   comment on that is that the procedural, and the timing of the  
16                   discovery request, certainly plays into the response that GE  
17                   had.

18                   Where, there was a discovery request that Mr.  
19                   Cascino served with the 22 different aircrafts, none of which  
20                   were the Falcon or the Challenger. And also at the time that  
21                   these discovery requests were served, we didn't even have the  
22                   deposition transcripts that provided the discovery that serves  
23                   as a basis for the claims about the Falcon and Challengers.  
24                   Those depositions took place after October 1st.

25                   So a lot of this -- we're dealing with, what is

1 essentially plaintiff's retroactive and bladed attempt to  
2 change their interrogatory requests to GE to now comport after  
3 the close of fact discovery, with whatever the evidence that  
4 they produced after the close of -- after the close of fact  
5 discovery resulted in.

6 And I think that's kind of one of the troubling  
7 aspects of this for GE, where it seems like plaintiffs are  
8 allowed to benefit from their own deleteriousness and delay in  
9 this litigation.

10 But to address --

11 THE COURT: Let me just respond to that, to say that  
12 I think that you have set that proposition out very well in  
13 your papers. I think it is set out in a persuasive way, and I  
14 completely get the point.

15 Nonetheless, I still think on balance, given where  
16 we were on all of this, and given the fast, as you know we  
17 had, maybe not from plaintiff's perspective but at least from  
18 my perspective, we have been a bit forgiving and we've been  
19 more flexible with respect to some of the minor delay issues,  
20 or what I would concede are minor is in terms of specific  
21 dates or a couple of weeks delay issues that are involved, and  
22 I'm working off of what I have now, and I'm -- I don't know if  
23 I ever would have focused on exactly when you would have  
24 received certain information, but nonetheless, I'm working off  
25 the record I have now, so --

1 MR. FONSTAD: And I appreciate that, Your Honor.

2 THE COURT: -- just so you know --

3 MR. FONSTAD: I guess then getting to the bulk of  
4 your questions concerning what GE documents are available and  
5 the like. I'm going to turn this over to my colleague, Ed  
6 Kenney who has dealt with the aircraft litigation for GE in  
7 the past. And the only thing that I would comment before Mr.  
8 Kenney proceeds is that some of Your Honor's assumptions about  
9 what GE's documents may exist and when aircraft even kind of  
10 came into the realm of the asbestos litigation may be a bit, a  
11 bit incorrect.

12 And now I'll let Mr. Kenney explain how the  
13 documents exist, what we have concerning these two different  
14 types of planes.

15 And then the only other bit of background is that  
16 the two different types of planes that are there that are at  
17 issue, the Falcons and the Challengers, are actually families  
18 of planes.

19 THE COURT: Okay.

20 MR. FONSTAD: The GE engine could only have been in  
21 some of the models within those families. And even if a  
22 particular model within the family had a GE jet engine, it  
23 doesn't mean that every model of the plane in that family had  
24 a GE jet engine.

25 THE COURT: So --

1                   MR. FONSTAD: But with that, I think I've spoken  
2 enough and I'll let Mr. Kenney speak.

3                   THE COURT: Well, let me just commend you for the  
4 rather polite way in which you told me that my basic position  
5 was absolutely incorrect and perhaps worse, but I hear that  
6 and I think it might be a distinction that's worth noting, as  
7 I think I've seen you point out in other documents there would  
8 be, perhaps, you know, who knows, hundreds, thousands,  
9 millions of particular products, or when you break it down by  
10 models that GE would have produced over time, and shame on me  
11 if I'm trying to throw out some kind of blanket assumption.

12                  So I will hear, I'd be interested to hear what Mr.  
13 Kenney has to say about this.

14                  Mr. Kenney, would you be good enough to identify  
15 your firm and let me know whether or not your appearance is  
16 actually entered in the --

17                  MR. KENNEY: Yes, my appearance is entered. My name  
18 is Edward Kenney, K-E-N-N-E-Y, and I'm with Sidley, Austin.

19                  THE COURT: Okay.

20                  MR. KENNEY: Representing General Electric Company.

21                  THE COURT: Thank you, Mr. Kenney, I'm happy to hear  
22 from you.

23                  MR. KENNEY: Okay. First of all, what Mr. Fonstad  
24 said about GE obviously has been involved in some asbestos  
25 litigation involving aircraft engines over the years. The

1 first one that I can recall was back in probably 2000 -- early  
2 2000 to 2003, 2004, somewhere in that neighborhood.

3 GE does not maintain a central repository of  
4 documents concerning aircraft engines. GE has over the years  
5 manufactured a number of different aircraft engines at two  
6 principal locations, Lynn, Massachusetts and Evendale, Ohio,  
7 and the records tend to be kept on an engine, specific  
8 records, engine specific basis in the location where the  
9 engines are manufactured.

10 The two engines that are potentially at issue in  
11 this case, and I should say the two engine families, are the  
12 CF700 in the case of the Falcon, and the CF34 in the case of  
13 the Challenger. And there's a number of different variants of  
14 each of those that could potentially have been in, for  
15 example, in Falcon jets there's three different variations of  
16 CF700's that could have been present in a Falcon jet. And in  
17 terms of CF34's, from what I understand, there's probably four  
18 or five different variations over the years that were used.

19 As Mr. Fonstad indicated, in the case of Falcon  
20 jets, there were other engines that were also used. Some of  
21 the Falcons have Garrett engines which GE did not manufacture.

22 In the case of the Challengers, I believe some of  
23 them, the early versions of them had Lycoming engines which GE  
24 did not manufacture.

25 Now in terms of what records would be available, to

1 determine whether or not GE engines were present at the KC  
2 Aviation facility in Appleton, Wisconsin during the years,  
3 between the years 1978 and 1991.

4 I talked to the engine managers for both the CF700  
5 and the CF34 and from what I've been told there are no sales  
6 records that were, that are available that would be able --  
7 that would enable us to determine whether or not a particular  
8 GE engine went to KC Aviation.

9 Let me just explain that typically, and typically in  
10 the case of business or executive jets, GE doesn't sell the  
11 engines or didn't sell the engines to a company like KC  
12 Aviation. They sold them to the air frame manufacturer, which  
13 in the case of Falcon jets was Dassault, it's a French  
14 company. In the case of the Challenger jets, it was  
15 Bombardier.

16 So basically GE would have sold the engines to  
17 Dassault in the case of Falcons. Dassault would have put the  
18 engines on the jets and sold them to whatever customer they  
19 sold them to. Same thing would be true with the CF34 engines  
20 that were sold to Bombardier. And from what I understand from  
21 the engine managers, GE does not have sales records that go  
22 back that far.

23 Basically the Falcon, the CF700 program goes back to  
24 the late sixties and production of CF700's was discontinued in  
25 1982. So, their sales records that would basically show how

1 many engines were sold to Dassault and when they were shipped  
2 and that sort of thing don't exist anymore.

3 In the case of the CF34, they're still being  
4 produced. Its production of that model, of that engine family  
5 I should say started in about 1978 or thereabouts. And they  
6 are still being produced. But we don't have sales records  
7 that date back to the seventies and eighties in terms of  
8 particular CF34 engines that were sold to Bombardier for  
9 inclusion on Challenger aircraft.

10 So, in terms of what records may still exist, one of  
11 the things that plaintiff indicated they were very interested  
12 in obtaining was technical manuals that would have been  
13 involved in maintenance of those particular engines. And I  
14 checked to see, you know, what was available with respect to  
15 those technical manuals.

16 Technical manuals are prepared by GE for engines it  
17 produces. There's technical manuals that exist for the  
18 CF700. There's also technical manuals that exist for the  
19 CF34. The way that these records, the way the technical  
20 manuals are maintained is, we would be able to produce the  
21 records -- the manuals as they exist today.

22 They go through a revision process, revised for a  
23 number of different reasons. They're revised for issues that  
24 might come up during operation of the aircraft and the  
25 engines. They may be revised due to issues that are addressed

1 by customers or by the FAA. And essentially what GE does is  
2 modify the manual and provide the revised versions of it to  
3 customers.

4 What we have today is we have the present version of  
5 the technical manuals for the CF700 and the present version of  
6 the manuals for the CF34. We might have some -- and they are  
7 not maintained all in one place. We don't have all the  
8 background information that went into the revisions. There's  
9 really no reason to keep, in the case of the CF700, all the  
10 revisions that you know, occurred from 19 -- the late 1960's  
11 to today. So the manual that we have today basically  
12 represents the manual as revised over the years.

13 Some background may still be available, although  
14 it's not organized in one particular place. And it would  
15 take, from what I have been told, a effort to find and collect  
16 the revisions to the manual over the -- even in recent years.  
17 And in terms of all the revisions going back to when the  
18 manual was first created back in the late sixties, a lot of  
19 that documentation probably no longer exists. And what does  
20 exist would be very difficult to locate.

21 THE COURT: Let me just interrupt you for one  
22 second. And again, I don't know enough about airplanes. But  
23 isn't there some place, whether it's your own historical  
24 reference or some kind of GE airplane engine, you know,  
25 historical whatever, that they would keep track for whatever

1 purposes, old manuals that would be --

2 MR. KENNEY: No. In fact, Your Honor, the FAA kind  
3 of discourages that, because originally as you can imagine,  
4 the manuals were produced in kind of looseleaf form. And when  
5 revisions were made, revised pages were sent to the customers  
6 and that sort of thing.

7 More recently, now it's done, they're done in PDF  
8 form. But the FAA has always discouraged keeping old manuals  
9 around because they don't want people who would be relying on  
10 the manuals to be relying on old information. So GE does not  
11 have old copies of the manuals.

12 Like for example, they wouldn't have a copy of the  
13 CF700 field level maintenance manual for the CF700 for, as it  
14 existed in 1985 or any other year before that.

15 THE COURT: So you're a hobbyist and you have money  
16 and you get a hold of a 1985 whatever, Falcon or Challenger,  
17 and you needed to repair it, there's no manual that exists?

18 MR. KENNEY: A manual exists for the CF700, you  
19 know, as revised up until the present time. So all the, all  
20 the changes that have been made and all the maintenance  
21 improvements and that sort of thing that have been made over  
22 the years, that's available to people who subscribe to the  
23 manual, owners of that engine.

24 But in terms of you know, could you get a 1985  
25 manual or version of the manual as it existed in 1985, you

1 couldn't get it from GE. Now whether you could get it from  
2 some private source or not, I don't know, but GE does not keep  
3 copies of the old manuals.

4 THE COURT: Okay.

5 MR. KENNEY: As they're revised, they're updated  
6 basically and revised. And what we have today is the manual  
7 as revised through 2013.

8 With respect to the CF700, remember it hasn't even  
9 been produced since 1982.

10 THE COURT: I guess I just wonder how much that  
11 helps you if you're trying to repair a 1975 aircraft.

12 MR. KENNEY: Well, I've never repaired a 1975  
13 aircraft, Your Honor, so I'm not sure. But my understanding  
14 is, as far as the aircraft, as far as the engines that still  
15 exist, they've gone through two or three different owners at  
16 least.

17 THE COURT: Okay.

18 MR. KENNEY: And so, somebody who is maintaining a  
19 CF700 engine as it exists today would, should at least in  
20 accordance with FAA requirements, should use the manual as it  
21 exists today.

22 THE COURT: Okay. So I interrupted you, so go  
23 ahead.

24 MR. KENNEY: No, that's okay.

25 And CF34 is the similar situation. We don't have

1 sales records that go back to the 1978 to 1991 period that  
2 would show which engines were sold to Bombardier for the most  
3 part.

4 We don't think -- in some cases, the larger airlines  
5 might buy a spare engine, like United Airlines or somebody  
6 like that, might buy an engine specifically from -- a spare  
7 engine from GE to use on their particular maintenance  
8 operations. But, we don't believe that -- and we haven't  
9 found any record that indicated that KC Aviation would have  
10 ever purchased an engine directly from GE.

11 It's my understanding that they would have been  
12 working on aircraft that were manufactured by Bombardier.  
13 Bombardier would have purchased the engines from GE. And so  
14 we don't have any ability really to determine which CF34  
15 engines went to, or ended up at KC Aviation. That would  
16 depend on who was operating the aircraft and that sort of  
17 thing.

18 THE COURT: Okay. So --

19 MR. KENNEY: I'm sorry, go ahead.

20 THE COURT: So if I'm an aircraft mechanic at KC in  
21 the 1980's and I'm working on a Bombardier aircraft with a GE  
22 engine, and I needed a replacement or find some components to  
23 work on it, I would go to, call Bombardier or go to Bombardier  
24 and they would then --

25 MR. KENNEY: Or you would have had a technical

1 manual as it existed at that point in time.

2 THE COURT: Okay.

3 MR. KENNEY: And basically, as I understand the way  
4 that companies that do maintenance -- now I don't know exactly  
5 what kind of maintenance KC Aviation was doing, and what  
6 manuals it would have had in its possession would depend on,  
7 because there are different manuals for different purposes.

8 THE COURT: Sure.

9 MR. KENNEY: There's -- there are basically three  
10 different, or three major types of maintenance that go on on  
11 aircraft and aircraft engines. There's field -- and there's a  
12 different manual for each one. There's basically a field  
13 level maintenance manual, there's an intermediate maintenance  
14 level and then there's an overhaul maintenance level. And  
15 I've not seen any indication or any evidence to suggest that  
16 KC Aviation was doing overhauls of GE engines.

17 So which manuals they would have had in their  
18 possession would depend on what exactly they were doing.

19 THE COURT: I got that, okay.

20 MR. KENNEY: And we don't have the ability to track  
21 that either back, you know, at that point in time. And as I  
22 understand it, KC Aviation has been -- it doesn't exist  
23 anymore. It now is Gulf Stream.

24 So anyway, if you were doing maintenance on an  
25 aircraft in 1985 or on an aircraft engine in 1985, what you

1 would have, what you should have would be the manual, the  
2 technical manual as it existed at that point in time. And you  
3 would have been, if you were a subscriber to the manuals, the  
4 GE manuals, you would have been provided with the revisions as  
5 they were adopted by GE and approved by the FAA. GE would  
6 send those to you. You should, what you were supposed to do  
7 was replace the section of the manual that had been revised  
8 and get rid of the old part, and then rely on that manual as  
9 revised. That's how the system worked.

10 So, and what we have in the case of both the CF700  
11 and the CF34 is we have the manuals as they exist today, and  
12 as they've been revised over the years. We have some backup  
13 that when they made a revision, we don't -- certainly with  
14 respect to the CF700, we don't have anywhere near all of it,  
15 at least in a way that it can be located without a tremendous  
16 amount of effort.

17 And with the case of the CF34, my understanding is  
18 it's been in production since 1978. The manuals have been  
19 revised more than 50 times. And it would be a -- it would  
20 take a tremendous amount of effort to try and figure out and  
21 find all the documentation that may have gone into any of the  
22 revisions. Probably the more recent ones it might be a little  
23 bit easier, but the ones going back to the seventies and  
24 eighties, if they still, if all that backup exists at all, it  
25 would be extremely difficult to find it.

1                   THE COURT: Okay. So, then I'm hearing that to the  
2 extent that there may be, and I guess I've heard you say that  
3 based upon your inquiries, there are not. But to the extent  
4 that there may be any sales records available that would  
5 relate to GE engines, they would not be organized in any way  
6 that would show to KC Aviation, and you have nothing on  
7 KC Aviation in your materials, as far as you know?

8                   MR. KENNEY: That's correct.

9                   We don't think -- frankly, Your Honor, we don't have  
10 records that show sales to KC Aviation. We don't think that  
11 there's any likelihood that their engines would have been sold  
12 to them, that they -- and we don't have sales records that go  
13 back, you know, to anybody back in the early, in the case of  
14 the CF700 we're talking late sixties, early seventies. We  
15 don't have sales records at all for those.

16                  But we think that where they would have been sold  
17 would have been to Dassault. What the Dassault has in France,  
18 we have no idea, in terms of what records they have.

19                  And basically what happened, Your Honor, was GE  
20 would sell the engines to an aircraft manufacturer; in the  
21 case of the Falcons it was Dassault, in the case of the  
22 Challenger it was Bombardier. And so they would sell it to  
23 the airframe manufacturer. The airframe manufacturer would  
24 put the engine on its aircraft and sell it to whoever they  
25 would sell it to.

1 I'm not sure that we've seen information as to these  
2 aircraft that were allegedly present at KC Aviation, who  
3 actually owned them.

4 THE COURT: Right. Okay. Let me ask you just to  
5 follow-up on this, and then I'm going to ask Mr. Cascino what  
6 comment he wants to make about this, or any other information.

7 On -- I don't know how familiar you are with the  
8 specific interrogatories, but one of the interrogatories for  
9 which there's a bit more of a robust response is number 9, and  
10 it -- just give me your answer to this. You circled around it  
11 certainly, but they asked for does the defendant GE have  
12 records concerning the sales of asbestos-containing products  
13 used in the aircraft industry during the period of 1958  
14 through 1991.

15 That interrogatory I think has effectively been  
16 amended by the plaintiffs to indicate that they would be  
17 concerned with the sales of asbestos-relating products or  
18 components in jet engines or jet engines at KC Aviation  
19 between 1978 and 1991.

20 Do you believe you covered that by virtue of the  
21 answers that you've given me so far?

22 MR. KENNEY: Well, Your Honor, I think what we said  
23 in our answer was that there were, there were asbestos-  
24 containing components in aircraft engines historically.

25 THE COURT: Right.

1                   MR. KENNEY: And over a period of time, those  
2 components were eliminated. In terms of the CF700 and the  
3 CF34, the kind of components we're talking about are clamps,  
4 gaskets and basically we're talking about clamps that are  
5 maybe a couple of inches, two, three inches, J-shape type  
6 clamps that had a asbestos-containing cushion on them that  
7 would hold hoses and that sort of thing in place.

8                   The gaskets would typically be, I would say three  
9 inches maybe, sometimes rectangular maybe two-by-three inches.  
10 In many cases, the gaskets would be, would have basically kind  
11 of a metal sandwich with some asbestos-containing material in  
12 between.

13                  Those were the kind of parts that were included in  
14 the engines. And GE eliminated those over a period of time.  
15 In terms of -- I think I mentioned that there were a number of  
16 different variants of the engines that were used on Falcon  
17 jets, I think I was told somewhere, three different variants,  
18 and four or five different variants on the CF34's that were  
19 used on Challenger aircraft.

20                  We do have some drawings, historical drawings, that  
21 show the particular parts and that sort of thing. And the way  
22 that GE drawings are maintained is there's an overall drawing  
23 and it references down to very detailed drawings. And there  
24 in many cases would be potentially hundreds or thousands of  
25 them altogether.

1           We do have some information concerning asbestos-  
2 containing parts that were included in these engines over a  
3 period of time. But whether you would even -- or whether  
4 someone would even potentially have access to them would  
5 depend on exactly what kind of work they were doing.

6           And typically, the asbestos-containing components  
7 were in the hot end of the engines, and would only be exposed  
8 if a major overhaul was conducted.

9           THE COURT: Right, okay.

10           MR. KENNEY: I don't know if that addresses your  
11 question, Your Honor, but that's about the best way I know how  
12 to try to address it.

13           THE COURT: All right. Where would these historical  
14 drawings be located?

15           MR. KENNEY: They're located, I believe the drawings  
16 for both these engines would be in Lynn, Massachusetts.

17           THE COURT: And would these cover the 1978 to 1991  
18 time periods?

19           MR. KENNEY: It would cover the period up to the  
20 present. And again, you know, they're revised over time as  
21 well.

22           So going through a search of those particular  
23 drawings would be a major, a major effort.

24           THE COURT: Right. Okay. Is there any more  
25 specific information you have with respect to the, you said

1 some of the asbestos-containing specifics, or whether they're  
2 components or whatever, all these engines were eliminated over  
3 time, do you have any -- does your information have any more  
4 specific information about that?

5 MR. KENNEY: Not really, Your Honor. It's -- the  
6 information that, the historical information that we have  
7 particularly is not very organized. And in order to try and  
8 find every potential reference to, you know, these are small  
9 parts. To find every reference or potential document that  
10 would be potentially responsive would be, would take a --  
11 would be a tremendous effort.

12 THE COURT: All right. Mr. Cascino, is there  
13 anything -- I want to give you an opportunity to comment here,  
14 or any issues you want to raise?

15 MR. CASCINO: Yes, Your Honor.

16 Number one, the plane family for the Challenger  
17 would be the CL-601 during the time period that -- right,  
18 Jason -- okay, and Your Honor, only 60 of those, just for your  
19 information, that are active today. They stopped making them  
20 in 1987.

21 The engine has a CF34 family as counsel indicated,  
22 most likely it's CF34-3A was the engine that was the GE engine  
23 used on the Challenger.

24 With regard to the Falcon jet, most likely they had  
25 a GE CF700-2D-Z engine in them. Again, there's not a lot of

1 these planes in either case that are out there. I think as of  
2 today there's roughly 33 of these Falcons that have GE  
3 engines.

4 We are interested in going and looking at the  
5 drawings that they do have. It is my understanding from  
6 talking to -- oh, I'm sorry, it's 2D-2, I'm being handed a  
7 note on the -- on what, Jason -- on the Falcon I gave the  
8 wrong thing, it's 2D-2.

9 With regard to these drawings, it's my understanding  
10 from an expert that I've retained, that you can go back, you  
11 start with the original engine and then you, whatever the  
12 engine is, and I just told you, we think we even know what  
13 engines there are, and then you go look at that, and then  
14 there's, the asbestos parts which the defendants admit in one  
15 of their responses on page 13 which are clamps, seals,  
16 adhesives, straps, troughs or gaskets in that they have.

17 You would then work your way backwards on those  
18 drawings to look at the actual piece that you're talking  
19 about, which could be identified by looking at the master  
20 drawing, and you'll have like, you'll have like numbers and  
21 then you go to those pages or whatever, and then you can see  
22 what that is actually made out of.

23 Of course, our interest from these drawings is when  
24 do they have asbestos in them and when do they stop having  
25 asbestos in them. That's important from our perspective.

1           I would like to make a comment too, that counsel  
2 keeps talking about sales records. And you know, we use the  
3 words sales of products or services.

4           Number one, GE supplied parts. And counsel did not  
5 mention any of that. And so if they were to take off, if they  
6 were to work on a GE engine, they would do certain things  
7 every six months. The way they do the service on these is  
8 they would do service for six months service, and a different  
9 service in six months, and a different service another six  
10 months later. So that the servicing of these engines went  
11 over, unless there was a problem with them, went over a period  
12 of months.

13           Secondly --

14           THE COURT: Mr. Cascino, can I interrupt you on that  
15 and ask Mr. Kenney to respond to the question about service.

16           MR. KENNEY: About parts?

17           THE COURT: Yes.

18           MR. KENNEY: And service.

19           THE COURT: Yes.

20           MR. KENNEY: Well, first of all, although GE does  
21 service engines for, as a contractor for customers, we don't  
22 know that -- and there's no way to tell whether or not we  
23 would have performed any service on the aircraft that would  
24 have, or engines that would have been present at KC Aviation.  
25 Probably not. But there's really no way for us to tell.

1           In terms of parts, GE does provide parts if  
2 requested by customers. We don't have records of parts that  
3 would have been provided to KC Aviation back in that time  
4 frame. It's too distant.

5           But the other thing too to understand is that many  
6 people, many companies that service aircraft or who own  
7 aircraft, can find out who the -- basically any of these  
8 asbestos-containing components that were formally in GE  
9 engines were basically provided by third-party vendors. And  
10 the third-party vendors are pretty well known to people in the  
11 aircraft industry. And it was pretty common, from what I  
12 understand, for people servicing aircrafts to purchase these  
13 sorts of parts directly from the vendors rather than from GE,  
14 because it's cheaper for them to do it.

15           THE COURT: Okay. All right, Mr. Cascino, go ahead.

16           MR. CASCINO: My understanding is that these engines  
17 are serviced, and they did not do the overhauls in the sense  
18 that what Mr. Sypchalla would have done is he would have  
19 inspected the engine, he might remove a gasket or fix it if  
20 it's small like that, but mostly they would take these  
21 aircraft engines off and in the process of taking them off,  
22 there were certain gaskets and things that were going to be  
23 disturbed, and then they would ship the engine to General  
24 Electric who would do the work on the engine, and then GE  
25 would ship the engine back.

1           And I'd be shocked if GE doesn't have those kind of  
2 records of those transactions going because you're talking  
3 about a jet engine being transferred. And there's not many of  
4 these planes.

5           I mean, understand that you know, you're talking  
6 about very, very few planes in total. You know, there might  
7 be as I said, 33 Falcon jets that would have had the GE  
8 engine. Or, you know, there -- the plane family for the GE  
9 engine with the Challenger is a CL-601. So there's not that  
10 many of these things, these airplanes that are out there that  
11 have the GE engines on these specific types of aircraft.

12           MR. KENNEY: Can I respond to that?

13           THE COURT: Please.

14           MR. KENNEY: There is, my understanding is there is  
15 somewhere in the neighborhood of a thousand CF700's that were  
16 manufactured. And in the case of the CF34's there's somewhere  
17 in the neighborhood of 1800 engines that were manufactured for  
18 business-type executive jet type service, and probably another  
19 1800 that were manufactured for retail jets.

20           And in terms of, my understanding is, in terms of  
21 the Falcons, that there were somewhere around -- originally,  
22 now we're talking about back in the sixties and seventies,  
23 somewhere around 400 or more of them that were manufactured.

24           So I think Mr. Cascino is right, in that the number  
25 of them that presently exist is pretty small. But this is 20

1 years after, more than 20 years after the fact.

2 THE COURT: All right.

3 MR. CASCINO: Again, there are 400 of the Falcons  
4 counsel is indicating, that's not a whole lot.

5 And again, with the other, I don't know whether he's  
6 talking about the 1800, -- counsel, are you talking about the  
7 ones with GE engines in it or are you --

8 MR. KENNEY: I'm talking about CF34's that were  
9 manufactured for business or executive jet type service.

10 MR. CASCINO: Okay. And are you talking about the  
11 ones that have the CF34 --

12 MR. SHEEN: Referring to the number of the engine.

13 MR. CASCINO: Oh, number of the engine.

14 MR. KENNEY: Yes. And just to put things in a  
15 little bit of perspective. My understanding is the Falcons  
16 each had two engines on them, as did the Challengers. So one  
17 aircraft isn't one engine. One aircraft is two engines.

18 MR. CASCINO: And we're not dealing with a whole lot  
19 of airplanes. And when you said 1800 plus 1800 or whatever,  
20 are you including the ones that would not have had a GE engine  
21 or are you talking GE engines?

22 MR. KENNEY: No, I'm talking GE engines, CF34's that  
23 were manufactured. Some on Challengers, some on other  
24 aircraft. That's 1800 for business -- they sort of  
25 categorized them as either business or executive type aircraft

1 like the Challenger.

2 MR. CASCINO: The records on the CF was 34-3A or 2A?  
3 CF34-3A.

4 MR. KENNEY: Well, I mean we really didn't have,  
5 until now, identification --

6 MR. CASCINO: Is that something you can provide?

7 MR. KENNEY: Is that something we can provide?

8 MR. CASCINO: Yes.

9 MR. KENNEY: In terms of what?

10 MR. CASCINO: Well, in terms of the design or the  
11 designs, the drawings that you talked about, records of parts  
12 from GE, the service of these engines from GE?

13 MR. KENNEY: Well, I don't -- from what I  
14 understand, we could not provide that, at least part  
15 information on that sort of thing dating back to 1991 and  
16 before, more than 20 years ago.

17 THE COURT: Let me just, what I'm -- I think what  
18 I'm kind of concluding from this is that yes, there are, there  
19 were obviously documents that GE would have had that would  
20 pertain to the sale or even products or parts used in  
21 servicing of these aircrafts. They don't seem to be  
22 particularly -- even though it might be a small number of  
23 planes involved, at least as of today a small number of  
24 planes, organized in a way that would make easy reference to  
25 them, at least from what we're hearing.

## Colloquy

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1           But I think there's potentially relevant evidence  
2 out there, which to me would at least meet the threshold  
3 admissibility question. And I think this comes down, is  
4 likely going to come down to a question of burden relevance as  
5 to burden kind of question.

6           And I think the only way for me to sort through  
7 that, and Mr. Kenney has made broad general references I think  
8 as to the difficulties of trying to accomplish things and has  
9 given us some information, but I think what the productive way  
10 to proceed with this would be dealing now with what I think is  
11 a lot -- I trust and I hope you agree, Mr. Fonstad, is much  
12 more specific information than you would have had before from  
13 Mr. Cascino, since the process helped at least in that regard,  
14 and Mr. Cascino at least has some understanding as to what  
15 they did have, perhaps don't have anymore but what they did  
16 have, that there be a revision to be very promptly done from  
17 Mr. Cascino as to the narrow specifics of what's being looked  
18 at, which I think one could do based upon what is on this  
19 record here today, and whatever elaboration needs to be  
20 obtained with consideration of this record here today.

21           And then, that can be assessed from the perspective  
22 of GE in terms of burden that might be applicable. I think  
23 it's best -- I don't know that we have to have affidavits in  
24 connection with ascertaining burden based upon consideration  
25 of what appears reasonable in our experience, but I do think

1 affidavits or declarations are helpful in that regard.

2                   And I think against that, depending upon if there  
3 are circumstances that there can be an indication of a further  
4 search, and that further search bears fruit or not bear fruit,  
5 there can be declarations that would address that question.  
6 And then declarations might address the question of a more  
7 extensive burden.

8                   But I'm hearing this now to be limited to these two  
9 types of aircraft, these two types of engines, somewhat  
10 limited. The time period is now a lot more limited. There is  
11 a specific identification of small components, of small  
12 aspects of these things, perhaps not readily accessible  
13 according to Mr. Kenney, but nonetheless present with asbestos  
14 in them. And we don't have clear information yet as to when  
15 it was that those components would have been eliminated, and  
16 that would obviously be relevant information.

17                  But I think that this ought to be -- I've heard  
18 enough here to say that this ought to be developed a bit more,  
19 both from the perspective of the narrowing of the request, and  
20 Mr. Cascino, I'm happy for you to say you stand on the record  
21 based upon what you articulated here today and what came out  
22 from what Mr. Kenney has said today. If you want to  
23 supplement it a bit more in terms of a letter that would be  
24 somewhat specific and you can do it very promptly within the  
25 next two or three days, that would be okay too.

1                   And then, we'll give the defendants, we'll give GE  
2 an opportunity to respond. That's the way I think it makes  
3 the most sense to proceed.

4                   MR. CASCINO: That's fine, Your Honor. I just need  
5 -- it will take me till Tuesday, the 21st is a holiday, to get  
6 a transcript of today, maybe the 23rd. I am not going to be  
7 available on the 24th and the 25th, and I'm not trying to push  
8 this off, but we'll do our best to get it done by Wednesday  
9 the 23rd.

10                  THE COURT: Okay, I'm going to put that into an  
11 order.

12                  MR. CASCINO: Yes, we'll do our damnedest, we'll do  
13 our very best.

14                  THE COURT: And then I would ask -- when Mr. Fonstad  
15 receives that, if you think, Mr. Fonstad, you could give us a  
16 response by the 30th, and that response may very well be you  
17 found out that you don't have enough time, but make a real  
18 effort to try to provide some kind of response, because it  
19 sounds to me like Mr. Kenney has obviously done a lot of work  
20 on this and looked at this, and is reasonably knowledgeable  
21 about this, but there have been some issues that have come up  
22 that maybe can be somewhat amplified.

23                  MR. CASCINO: Your Honor, may I also be able to talk  
24 with Mr. Kenney? Maybe he and I can sort through some of this  
25 as well before I write whatever it is to the Court. At least

1 that we state out our position, if nothing else.

2 THE COURT: Yes, I would encourage that. And Mr.  
3 Kenney, I hope you have no objection to that.

4 MR. KENNEY: No, I have no objection to that.

5 THE COURT: All right. Okay.

6 MR. KENNEY: If you want to talk after this call,  
7 Mr. Cascino, you can call me at 312-853-2602.

8 MR. FONSTAD: Your Honor, this is John Fonstad. The  
9 only question I have is, we have, under the current scheduling  
10 order which still applies to this case, our summary judgment  
11 motion is due on February 1st.

12 I'm assuming that Mr. Cascino, you know, depending  
13 on whether or not, you know, how this actually shakes out in  
14 terms of if we can find anything responsive to a more tailored  
15 discovery request, might want to file an expert report  
16 concerning GE engines, and we might need to depose that  
17 expert.

18 THE COURT: Yes.

19 MR. FONSTAD: So I'm wondering, should we move that  
20 summary judgment deadline?

21 THE COURT: Yes. What I will do is to enter an  
22 order specifically with respect to Sypchalla that will suspend  
23 for now the summary judgment deadline. And I'll have to take  
24 a look at the order and see what it says about submission of  
25 expert reports and that thing, but suspend those deadlines

1 subject to a further order, once this aspect of it gets worked  
2 out. But I'm sure Mr. Cascino appreciates the need for that,  
3 and that's what we'll do.

4 MR. CASCINO: That's fine, Your Honor.

5 And the other point is that we still don't have a  
6 date, because we have to have the hearing of this motion, and  
7 I think there's another UPC one or Boeing one or something out  
8 there that still exists before our expert, and the Court on  
9 November 5th said we didn't have to name an expert until we  
10 got through all of this discovery.

11 THE COURT: Yes.

12 MR. CASCINO: So this thing is, this individual case  
13 has fallen on its own track.

14 THE COURT: That's right, that's right.

15 MR. CASCINO: And as the Court indicated way back  
16 when, it did see that this was a possibility that cases could  
17 wind up on their own track. But as long as we did the  
18 substantial amount of submissions, the Court was going to be  
19 permissible in that regard, and that sounds like what's going  
20 on. So we appreciate that.

21 THE COURT: That's right. That's exactly right.

22 Don't get the idea that I suggested that it was going to  
23 happen with more than one case. We were talking about  
24 Sypchalla at the time.

25 MR. CASCINO: No problem.

1                   THE COURT: All right, gentlemen. So, Mr. Fonstad,  
2 you're good with that?

3                   MR. FONSTAD: I'll trust your judgment, Your Honor.  
4 Thank you.

5                   THE COURT: You're very diplomatic today, Mr.  
6 Fonstad.

7                   MR. KENNEY: Yes, he only criticizes the judge once  
8 per call.

9                   THE COURT: Yes, that's good.

10                  MR. FONSTAD: And very delicately at that.

11                  THE COURT: Indeed, indeed. All right, gentlemen,  
12 thank you very much.

13                  ALL COUNSEL: Thank you, Your Honor.

14                  (Proceeding concluded at 3:56 p.m.)

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## C E R T I F I C A T I O N

2 We, Josette M. Jones and Sandra Carbonaro, court  
3 approved transcribers, certify that the foregoing is a correct  
4 transcript from the official electronic sound recording of the  
5 proceedings in the above-entitled matter.

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JOSETTE M. JONES

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SANDRA CARBONARO

12 | Diana Doman Transcribing

13 | AGENCY

DATE